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07 CIV 9939

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

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FUJITSU LIMITED,

Plaintiff,

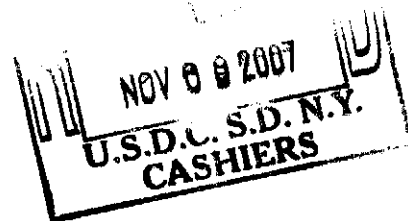
- against -

EXPEDITORS INTERNATIONAL OF  
WASHINGTON, INC. and EVA AIRWAYS  
CORPORATION,

Defendants.  
-----X

ECF CASE

COMPLAINT



Plaintiff, FUJITSU COMPUTER PRODUCTS OF AMERICA, INC., by its attorneys, McDermott & Radzik, LLP, complaining of the defendants, alleges upon information and belief as follows:

**FIRST:** Plaintiff's claim involves international transportation as defined in the Convention for the Unification of Certain Rules Relating to International Transportation by Air ("Warsaw Convention"), October 29, 1929, 49 Stat. 3000 (1934), 137 L.N.T.S. 11 *reprinted in note following* 49 U.S.C. § 40105, its amending Protocols and/or the Montreal Convention, and as such arises under a treaty of the United States and this Court has jurisdiction pursuant to 28 U.S.C. § 1331.

**SECOND:** At all times mentioned herein, Plaintiff, Fujitsu Limited (hereinafter “Fujitsu”), was and still is a corporation organized and existing under and by virtue of the laws of Japan, with an office and place of business at Shiodome City Center 1-5-2 Higashi-Shimbashi Minato-ku, Tokyo, Japan.

**THIRD:** At all times hereinafter mentioned, Defendant, Expeditors International of Washington, Inc. (hereinafter “Expeditors”), was and now is a corporation organized and existing under and by virtue of the laws of the United States with an office and place of business at 1015 Third Avenue, Seattle, Washington, and was and now is engaged in business as an indirect air carrier.

**FOURTH:** At all times hereinafter mentioned, Defendant, Eva Airways Corporation (hereinafter “Eva Airways”), was and now is a corporation organized and existing under and by virtue of the laws of China with an office and place of business at 12440 East Imperial Highway Suite 250, Norwalk, California, and was and now is engaged in business as a common carrier of merchandise by air for hire.

**FIFTH:** This Court has jurisdiction over the Defendants by virtue of the Defendants’ continuous and systematic contacts with the forum state. Additionally, each Defendant is registered with the New York Department of State as a foreign business entity licensed to do business within the State of New York.

**SIXTH:** On or about November 12, 2005 there were shipped by or on behalf of Expeditors, then in actual good order and condition, a cargo consisting of eleven (11) pallets of hard disk drives (hereinafter, “the goods”) consigned to Fujitsu for which the Defendant, Expeditors, acknowledged receipt under House Air Waybill number 419205454 and the said Defendant agreed to carry the said goods from Austin,

Texas to Manila, Philippines and then and there deliver them in the same actual good order and condition as when delivered to the said defendant.

**SEVENTH:** Defendant, Expeditors, subcontracted with Defendant, Eva Airways, to ship the goods via air carriage, and issued Master Air Waybill number 695 74819452 to acknowledge receipt of the goods.

**EIGHTH:** Thereafter Defendants, Eva Airways and Expeditors, delivered the goods to Plaintiff's representatives on November 17, 2005; however, the goods were not in the same good order and condition as when shipped, but rather the shipment of hard disks arrived in wet boxes and were determined to be in unusable condition, all in violation of the said Defendants' duties as a common carriers of merchandise by air for hire and/or as cargo handlers.

**NINTH:** The Plaintiff, Fujitsu, is consignee or owner of the shipments hereinafter described and brings this action on its own behalf and as agent or trustee on behalf of and for the interest of all parties who may be or become interested in the said shipment, as their respective interests may ultimately appear, and the plaintiff is entitled to maintain this action.

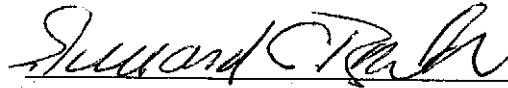
**TENTH:** By virtue of the premises, Plaintiff has sustained damage in the sum of \$ 23,971.00 as nearly as same can now be determined, no part of which has been paid although duly demanded.

**WHEREFORE,** plaintiff demands judgment against Defendants, Expeditors and Eva Airways jointly and severally up to the sum of \$ 23,971.00 plus interest from November 17, 2005 together with costs and disbursements of this action.

Dated: New York, New York  
November 9, 2007

McDERMOTT & RADZIK, LLP  
Attorneys for Plaintiff,  
Fujitsu Limited

By:

A handwritten signature in black ink, appearing to read "Edward C. Radzik", written over a horizontal line.

EDWARD C. RADZIK (ER-2473)

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Our Case File No.: 66-07-59 ECR/TRD